

Exhibit 21

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN
PRODUCTS LIABILITY LITIGATION**

This Document Relates to All Actions

MDL No. 2875

Honorable Robert B. Kugler,
District Judge

Honorable Joel Schneider,
Magistrate Judge

**RESPONSES OF MCKESSON CORPORATION TO PLAINTIFFS’
SECOND AMENDED SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO WHOLESALE DEFENDANTS**

Pursuant to the Federal Rules of Civil Procedure and the Local Rules of the District of New Jersey and the Orders entered by the Court (Dkt. Nos. 507 and 509), McKesson Corporation (“McKesson”) responds to Plaintiffs’ Second Amended Set of Requests for Production of Documents.¹ The Responses are based upon the presently known and reasonably available information and upon a search of documents kept and reasonably available in the ordinary course of business; discovery is still ongoing and may result in additions, variations, or changes hereto. Documents produced in response to Requests that seek information as to Manufacturer Defendants and Retail Pharmacy Defendants are based on the

¹ The Court has ordered that there may be no objections to these Requests and in compliance with such order, McKesson asserts no such objections; however, McKesson does not waive and instead reserves all protections afforded it by the Federal Rules of Civil Procedure and applicable law including its rights under Rules 26 and 12(b).

currently operative Master Complaints (Dkt. Nos. 122, 123, and 398). All Documents produced in response to the Requests are produced with permission of the Court on a rolling basis and are subject to the Confidentiality and Protective Order (Dkt. No. 139) entered by the Court.

RESPONSES TO REQUESTS FOR PRODUCTION

I. SOURCING (UPSTREAM)

1. **For purchases of VCDs by you from Manufacturer Defendants during the time period from January 1, 2012 to December 31, 2019, produce documents sufficient to identify the dates of purchase, the quantities/units purchased, the NDC, batch and lot numbers, and expiration date (to the extent such information is maintained by you in the ordinary course of business and can be obtained following a reasonable search) for the VCDs purchased, and the name of Manufacturer Defendant from whom the VCDs were purchased.**

RESPONSE:

McKesson is currently performing the appropriate database searches to produce such information related to the NDC numbers identified by Plaintiffs in Exhibit A hereto, and the results will be produced as available in the format submitted by exemplar to the Plaintiffs and Court.

II. SALES (DOWNSTREAM)

2. **For sales of VCDs by you to Retail Pharmacy Defendants during the time period from January 1, 2012 to December 30, 2019, documents sufficient to identify the quantities/units sold, the NDC, batch and lot numbers, and expiration date (to the extent such information is maintained by you in the ordinary course of business and can be obtained following a reasonable search), and purchaser name.**

RESPONSE:

McKesson is currently performing the appropriate database searches to produce such information related to the NDC numbers identified by Plaintiffs in Exhibit A hereto, and the results will be produced as available in the format submitted by exemplar to the Plaintiffs and Court.

3. **[Removed]**

III. WARRANTIES/STATEMENTS (UPSTREAM)

4. **Produce documents sufficient to identify your final written policies, if any, that set forth the shipment documents you require be provided to you by a Manufacturer Defendant.**

RESPONSE:

McKesson is currently collecting such documents, and the results will be produced as available.

5. **Produce exemplar documents sufficient to identify the type of manufacturer-included packaging or labeling documents, shipment documents, or similar information which accompany VCDs sold to you by the Manufacturer Defendants.**

RESPONSE:

McKesson is currently collecting such exemplars, and the results will be produced as available, with the exception of an exemplar of the transaction information, transaction history, and transaction statement (“T3”) documents received from Manufacturer Defendants. As a wholesaler, McKesson is prohibited from making such production pursuant to the wholesaler-specific section 360eee-1(c)(1)(A)(v)(II) of the DSCSA, which specifically establishes the confidential nature of such documents (“A wholesale distributor shall . . . maintain the confidentiality of the transaction information (including any lot level information consistent with the requirements of this section), transaction history, and transaction statement for a product in a manner that prohibits disclosure to any person other than the Secretary or other appropriate Federal or State official. . .”). Moreover, FDA has exclusive jurisdiction to determine exceptions, if any, to such statutory confidentiality and prohibition; and section 360eee-4(a) preempts any action requiring production of T3 documents in a manner inconsistent with the above.

IV. WARRANTIES/STATEMENTS (DOWNSTREAM)

6. **Produce documents sufficient to identify your final written policies, if any, that set forth the shipment documents you require be provided by you to Retail Pharmacy Defendant(s) or other retail pharmacies concerning VCDs sold by you.**

RESPONSE:

McKesson is currently collecting such documents, and the results will be produced as available.

7. **Produce documents sufficient to identify as exemplar the type of manufacturer-included packaging or labeling documents, shipment documents, or similar information which accompany VCDs sold by you to Retail Pharmacy Defendants or other retail pharmacies.**

RESPONSE:

McKesson is currently collecting such exemplars, and the results will be produced as available, with the exception of an exemplar of the transaction information, transaction history, and transaction statement (“T3”) documents sent to Retail Pharmacy Defendants. As a wholesaler, McKesson is prohibited from making such production pursuant to the wholesaler-specific section 360eee-1(c)(1)(A)(v)(II) of the DSCSA, which specifically establishes the confidential nature of such documents (“A wholesale distributor shall . . . maintain the confidentiality of the transaction information (including any lot level information consistent with the requirements of this section), transaction history, and transaction statement for a product in a manner that prohibits disclosure to any person other than the Secretary or other appropriate Federal or State official. . .”). Moreover, FDA has exclusive jurisdiction to determine exceptions, if any, to such statutory confidentiality and prohibition; and section 360eee-4(a) preempts any action requiring production of T3 documents in a manner inconsistent with the above.

V. TESTING/INSPECTION

8. **Produce documents sufficient to identify the testing and testing results of VCDs provided to you by the Manufacturer Defendants**

for VCDs purchased by you during the time period from January 1, 2012 to December 30, 2019.

RESPONSE:

McKesson is not in possession of documents responsive to this Request. As a wholesaler, McKesson was not provided with “testing” or “testing results” for the VCDs purchased from Manufacturer Defendants.

- 9. Produce documents sufficient to identify the testing, if any, you performed on VCDs purchased by you from Manufacturer Defendants, and results thereof, during the time period from January 1, 2012 to December 30, 2019.**

RESPONSE:

McKesson is not in possession of documents responsive to this Request. As a wholesaler, McKesson did not perform testing on the VCDs purchased from Manufacturer Defendants, and, in fact, is protected by law from performance of such testing.

VI. DISTRIBUTION CENTERS

- 10. Produce documents sufficient to identify your distribution centers from which VCDs purchased by you from Manufacturer Defendants were shipped, including location and state(s) served by each distribution center.**

RESPONSE:

McKesson is currently collecting such documents, and the results will be produced as available.

- 11. To the extent available, produce documents sufficient to identify your distribution centers that received or shipped VCDs purchased by you from Manufacturer Defendants subject to recall.**

RESPONSE:

McKesson is currently collecting such documents, and the results will be produced as available.

VII. RECALL

12. **Produce documents sufficient to identify your final written policies or procedures specifically governing the VCD recalls, if any.**

RESPONSE:

McKesson herewith produces its Recall Standard Operating Procedure.

13. **Produce documents sufficient to show the initial VCD recall communications you received from the Manufacturer Defendants from whom you purchased VCDs.**

RESPONSE:

McKesson herewith produces various such communications. McKesson is currently collecting additional responsive documents, which will be produced as available.

14. **Produce documents sufficient to show the official notice, if any, by which you communicated any VCD recall to any Retailer Defendant.**

RESPONSE:

McKesson herewith produces various such communications. McKesson is currently collecting additional responsive documents, which will be produced as available.

15. **Produce documents sufficient to identify by NDC, batch and lot numbers (to the extent such information is maintained by you in the ordinary course of business and can be obtained following a reasonable search) recalled VCDs: (a) currently on hand; (b) returned by you; or (c) destroyed by you.**

RESPONSE:

McKesson is currently conducting a search for such information, which will be produced if and as available.

16. **Produce documents sufficient to identify a list of your significant employees involved in managing the recall of VCDs.**

RESPONSE:

McKesson is currently conducting a search for such information, which will be produced as available.

17. **Produce documents sufficient to identify distribution facilities that received any recalled VCD.**

RESPONSE:

McKesson is currently conducting a search for such information, which will be produced as available.

VIII. COMPLIANCE WITH THE DRUG SUPPLY CHAIN SECURITY ACT

18. **Documents sufficient to identify your final written policy(ies) or procedures used by you to track purchases and sales of prescription drugs pursuant to the Drug Supply Chain Security Act and regulations promulgated thereunder, and/or final written policy(ies) or procedures used by you to track purchases and sales of prescription drugs after January 1, 2012, and prior to the enactment of the DSCSA.**

RESPONSE:

McKesson states that it will produce final written policies regarding its formal tracking of its purchase and sales of its prescription drugs inventory as wholesaler, and to the extent separate, those final written policies related to specific DSCSA prescription drug tracking requirements. McKesson is currently conducting a search for such documents which it will produced if and as available.

IX. DOCUMENT PRESERVATION

19. **Produce the final document/data retention or destruction policies, or sections thereof, if any, in effect during the time period from January 1, 2012 to December 31, 2019 and applicable to records of purchases and sales of VCDs, shipment documents accompanying purchases and sales of VCDs, product testing documents accompanying purchases and sales of VCDs, and VCD recall documents.**

RESPONSE:

McKesson herewith produces a summary of such policies for such time period, though McKesson states that the production of those documents is not and should not be interpreted as an acknowledgment that McKesson has or should have the documents or types of documents listed in the Request.

X. COMPLAINTS

20. **Produce documents sufficient to show all complaints you received from anyone concerning the purity or contamination of VCDs during the time period from January 1, 2012 to December 31, 2019, excluding litigation generated complaints.**

RESPONSE:

McKesson is currently conducting a search for such information, which will be produced if and as available.

XI. INDEMNITY AGREEMENTS

21. **Produce final written indemnification agreements applicable to any claims currently pending in MDL 2875 against Wholesaler Defendants.**

RESPONSE:

McKesson is currently conducting a search for such information, which will be produced as available.

Dated: August 14, 2020

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ D'Lesli M. Davis

D'Lesli M. Davis

State Bar No. 05479450

dlesli.davis@nortonrosefulbright.com

Ellie Norris

State Bar No. 24099138

ellie.norris@nortonrosefulbright.com

2200 Ross Avenue, Suite 3600

Dallas, TX 75201-7932

Telephone: (214) 855-8000

Facsimile: (214) 855-8200

Counsel for McKesson Corporation

CERTIFICATE OF SERVICE

I certify that on the 14th day of August, 2020, I electronically transmitted the attached document to all counsel of record.

/s/ D'Lesli M. Davis

D'Lesli M. Davis

Exhibit A

NDC Package Code

00093-7037-56
00093-7037-98
00093-7038-56
00093-7038-98
00093-7807-56
00093-7807-98
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